

**United States District Court
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

MELVIN EARL WILLIAMS, JR.,

Plaintiff,

V.

THE CITY OF DENTON, TEXAS, APRIL
DAWN MCDONOUGH, KEITH D. MARTIN,
and DENTON COUNTY, TEXAS,

Defendants.

Civil Action No.: 4:17-cv-00811

**MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

Came on for consideration the report of the United States Magistrate Judge in this consolidated action, this matter having been heretofore referred to the United States Magistrate Judge pursuant to 28 U.S.C. § 636. On January 10, 2019, the report of the Magistrate Judge was entered (see Dkt. #40) containing proposed findings of fact and recommendations that:

1. Defendant April Dawn McDonough’s (“McDonough”) Motion to Dismiss Under Rule 12 (Dkt. #16) be **DENIED** as to Plaintiff’s excessive force claim and **GRANTED** as to Plaintiff’s gross negligence claim;
2. Defendant Keith D. Martin’s (“Martin”) Motion to Dismiss Under Rule 12 (Dkt. #20) be **GRANTED** as to Plaintiff’s excessive force claim and **GRANTED** as to Plaintiff’s gross negligence claim;
3. Defendant City of Denton, Texas’ (the “City”) Motion to Dismiss Under Rule 12 (Dkt. #19) be **DENIED**; and
4. Defendant Denton County, Texas’ (the “County”) Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(6) (Dkt. #6) be **DENIED**.

Having received the report of the United States Magistrate Judge, and no objections thereto having been timely filed, the Court is of the opinion that the findings and conclusions

of the Magistrate Judge are correct and adopts the Magistrate Judge's report as the findings and conclusions of the Court.

IT IS THEREFORE ORDERED that:

1. Defendant McDonough's Motion to Dismiss Under Rule 12 (Dkt. #16) is **DENIED** as to Plaintiff's excessive force claim and **GRANTED** as to Plaintiff's gross negligence claim;
2. Defendant Martin's Motion to Dismiss Under Rule 12 (Dkt. #20) is **GRANTED** in its entirety, and all claims against Defendant Martin shall be **DISMISSED**. Plaintiff has been allowed to file an amended complaint, so the Clerk's Office will not terminate Defendant Martin at this time.
3. The City's Motion to Dismiss Under Rule 12 (Dkt. #19) is **DENIED**; and
4. The County's Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(6) (Dkt. #6) is **DENIED**.

IT IS SO ORDERED.

SIGNED this 4th day of February, 2019.



AMOS L. MAZZANT
UNITED STATES DISTRICT JUDGE